

1 Q And they have about [REDACTED]  
2 extended base subscribers in Roanoke, correct?

3 A [REDACTED]  
4 they're also one of the biggest cable  
5 companies in the country.

6 Q But the areas in dispute we're  
7 talking approximately [REDACTED] subscribers,  
8 correct?

9 A Give or take, that's about right.

10 Q So that's a significant  
11 observation in your mind?

12 A That is an observation worth  
13 examining, yes.

14 Q Is it a significant observation?

15 A By examining it, I consider it to  
16 be significant, yes.

17 Q Well, are you examining LNL  
18 Communications?

19 A I include it in the list, but I'm  
20 putting my weight on the biggest ones, yes.

21 Q Is LNL a significant observation  
22 in your mind?

1 A Well --

2 Q Can we agree that LNL is not  
3 significant at [REDACTED] subs?

4 A I would say LNL is basically  
5 insignificant, but if we're going to do that,  
6 then we'd have to exclude nTelos as well.

7 Q Let's exclude nTelos and LNL.  
8 What about Osbourne Cable with [REDACTED]

9 A I would again go back to looking  
10 at the top ten in each area.

11 Q So I'm working towards you there.  
12 I'm trying to get you there, Mr. Orszag.

13 A Okay.

14 Q Can we exclude Osbourne Cable at  
15 52?

16 A I don't want to exclude any. I  
17 want to look at all of the decisions, but I  
18 want to put more weight on the top ten.

19 Q Why the top ten?

20 A Because you need enough  
21 observations. If you just focused on this by  
22 subscriber weighting, then whatever DIRECTV

1 and Dish are doing, a vertically-integrated  
2 cable company is going to have to do, because  
3 when you exclude say a Comcast, DIRECTV and  
4 Dish represent the overwhelming majority of  
5 subscribers in each of these areas. And  
6 that's not a proper way to do the analysis and  
7 so one wants to include sufficient  
8 observations to have some kind of reliable  
9 result.

10 Q Is it true that in addition to  
11 Suddenlink with [REDACTED] subs, the next biggest  
12 observation you get which is actually a  
13 bigger observation is Blue Ridge Cable in  
14 Harrisburg with [REDACTED] extended base  
15 subscribers?

16 A That is correct, if you go across  
17 all three cables.

18 Q Have you looked at the  
19 capitalization of these smaller operators?

20 A No, I have not.

21 Q Do you know whether the price is  
22 right and these operators just can't afford

1 it?

2 A It's not clear to me why it  
3 matters. A lot of these carry Comcast  
4 SportsNet Mid-Atlantic and they found that  
5 price to be right and remember, when you get  
6 carriage, you get some wash support and then  
7 hopefully you get some incremental benefits  
8 that they offer. I'm assuming that these  
9 players are rational and they make rational  
10 decisions.

11 Q Which ones carry Comcast SportsNet  
12 Mid-Atlantic?

13 A These were included in Mr. Wyche's  
14 testimony. Sitting here today, I can't list  
15 them precisely, but they're included as an  
16 attachment to Mr. Wyche's testimony.

17 Q Have you studied the market  
18 capitalization of those?

19 A No, I have not.

20 Q Have you studied their balance  
21 sheets?

22 A No, I have not.

1 Q Would you agree with me that some  
2 decisions count more than others?

3 A It's a very general proposition.  
4 I think as a general proposition, sure. There  
5 are some decisions that sometimes count more  
6 than others.

7 Q Isn't it true that if the  
8 economists recognize that not all market votes  
9 count the same?

10 A Absolutely.

11 Q Intensity of the vote matters,  
12 true?

13 A Potentially, yes. Depends on the  
14 market examined.

15 Q And sophistication of the operator  
16 also matters, true?

17 A It could, depending upon the  
18 market examined.

19 Q If I buy 100 shares of Walt Disney  
20 stock, is my vote of confidence in Walt Disney  
21 entitled to as much weight as Warren Buffet's?

22 A I don't know if Warren Buffet is

1 an owner of Walt Disney, so I can't -- if he  
2 is, and he owns more than a 100 shares, he  
3 gets more votes than you do.

4 Q That's true, because I'm not a  
5 market maker, right?

6 A No, it's because you own less  
7 shares than he does. Fewer shares than he  
8 does.

9 Q Now you say that we should  
10 disregard the observation of DIRECTV, correct?

11 A I don't say disregard.

12 Q You think that they have a  
13 different opportunity cost of carriage,  
14 correct?

15 A Yes, I do.

16 Q Isn't it true that DIRECTV and  
17 Dish are Comcast's largest actual competitors?

18 A They are their largest direct  
19 competitors for subscribers, yes.

20 Q And that is true within the three  
21 regions we're talking about today, correct?

22 A Yes, that is true.

1           Q       Is it true that DIRECTV and Dish  
2       carry MASN to hundreds of thousands of  
3       subscribers in the Harrisburg DMA?

4           A       In the DMA, as a whole, yes, but  
5       then it also includes Region 3, yes.

6           Q       What about to hundreds of  
7       thousands of subscribers in Roanoke/Lynchburg  
8       DMA?

9           A       I believe that to be true, yes.

10          Q       And what about to more than  
11       100,000 subscribers in the Tri-Cities DMA?

12          A       I believe that to be true.

13          Q       Is it true that DIRECTV and Dish  
14       make no geographic exclusions for MASN within  
15       these DMAs?

16          A       Other than how the rights will  
17       dictate where they can carry the programming  
18       or not, the answer is no, because remember,  
19       there is certain programming on MASN that they  
20       have to black out.

21          Q       What programming on MASN do they  
22       have to black out at any of these disputed

1 regions?

2           A       For example, there are certain  
3 blackout rules with regard to games that would  
4 govern whether they can deliver the  
5 programming or not and it may be that various  
6 college or Ravens football, they're not  
7 allowed to offer in certain areas as well.

8           Q       As you sit here today what games  
9 are you aware of blackout restrictions for  
10 Dish or DIRECTV in the three regions we're  
11 talking about?

12          A       I don't know off the top of my  
13 head the specific blackout rules with regard  
14 to home games and how they work, but I know  
15 from personal experience that there are games  
16 that I can't get access to.

17          Q       In Harrisburg on DIRECTV or Dish  
18 or MASN?

19          A       Again, in the D.C. area, when I  
20 lived in D.C., yes.

21          Q       To be fair, Mr. Orszag, you're  
22 offering an opinion as an expert, true?



1 A Yes.

2 Q I'm going to ask you a probe on  
3 those areas where you seem to be saying  
4 something that's not supported, okay?

5 A I know that there are blackout  
6 rules. I'm saying I don't know the details of  
7 blackout rules.

8 Q Okay, let's be clear. We're  
9 talking about a very specific situation, not  
10 a general one, would you agree with me?

11 A You've now made it specific with  
12 regard to Harrisburg.

13 Q Let's talk about it with respect  
14 to all three markets: Harrisburg,  
15 Roanoke/Lynchburg, and the Tri-Cities area.

16 A I do not know the blackout rules,  
17 no, I do not.

18 Q Do you know of any blackout games  
19 on MASN for the satellite guys, in any of  
20 those regions?

21 A It's not something I've analyzed.

22 Q So the answer is no, you don't?

1           A           I do not know that.

2                   JUDGE SIPPEL:  What is a blackout  
3 rule?  Could you give me a --

4                   THE WITNESS:  There are certain  
5 games that because of certain rules that Major  
6 League Baseball puts in place that the  
7 regional sports networks are not allowed to  
8 deliver to certain areas, so as a result the  
9 game is quote blacked out, that is, it's not  
10 shown on the channel when you turn to it.  So  
11 if you went to -- you punched in whatever the  
12 MASN number is on whoever your MVPD is, you  
13 can't actually watch the game.

14                  JUDGE SIPPEL:  Because baseball is  
15 blacked out.

16                  THE WITNESS:  Those rules are  
17 disseminated by Major League Baseball.  In the  
18 case of NFL, or from the sports right owners  
19 propagate those rules.

20                  JUDGE SIPPEL:  But this is called  
21 a blackout or a blockout?

22                  THE WITNESS:  Black out, like

1 black, the color black.

2 JUDGE SIPPEL: Hm.

3 THE WITNESS: The screen will  
4 actually look like it's a black screen.

5 MR. KIM: May I proceed, Your  
6 Honor?

7 JUDGE SIPPEL: Sure.

8 BY MR. KIM:

9 Q So Mr. Orszag, is it true that  
10 Dish and DIRECTV make no geographic exclusions  
11 for MASN within the three DMAs we're talking  
12 about?

13 A According to their contracts, my  
14 understanding is they cannot accept for what  
15 the rules or rights owners put in place.

16 Q Is it true that Dish and DIRECTV  
17 both pay the same rates on the same conditions  
18 for MASN?

19 A They both pay the same direct  
20 license fees to MASN as do the regions.

21 Q Isn't it true those are the same  
22 rates and conditions offered to Comcast in

1 those regions?

2 A Yes.

3 Q But it's your testimony that  
4 neither DIRECTV nor Dish is an appropriate  
5 comparator for Comcast in those regions, true?

6 A I think appropriate comparable is  
7 too strong. I would say it's a relevant  
8 comparable, but one that has to be examined in  
9 the right context given the differences and  
10 the technologies and competitive pressures  
11 that they faced as well as the implications of  
12 them being the overwhelming majority of non-  
13 Comcast subscribers in these areas.

14 Q And it's your testimony, is it  
15 not, that arm's length transactions in the  
16 marketplace are extremely relevant to  
17 economists?

18 A Absolutely.

19 Q And you would agree that Dish and  
20 DIRECTV are arm's length transactions in the  
21 marketplace, would you not?

22 A Yes, they are, but it's not clear

1 that the Region 4 prices and arm's length  
2 negotiation is part of a bundled price with  
3 regard to DIRECTV and Dish.

4 Q Your region for excluding them as  
5 a relevant comparator is because their  
6 opportunity costs may be different?

7 A Again, you're using the word  
8 exclude. What I would say is that for putting  
9 them in the appropriate context, opportunity  
10 cost is one factor why I put them in the  
11 context that I use them.

12 Q Is it your testimony that their  
13 opportunity costs are different?

14 A Yes.

15 Q You say in your testimony that DBS  
16 providers and telcos generally face lower  
17 opportunity costs of carriage than cable  
18 operators. Is that right?

19 A That is correct.

20 Q You would agree with me this is  
21 again not a general case, correct?

22 A I agree with you this is a

1 specific case, yes.

2 Q We're talking about very specific  
3 markets and systems, correct?

4 A That is correct.

5 Q And you don't know what the  
6 difference is in the opportunity costs for the  
7 satellite guys and Comcast in those regions,  
8 do you?

9 A It's a very difficult calculation  
10 to do and it's not one that I have been able  
11 to undertake.

12 Q So the answer is no, you don't?

13 A I do not know, yes.

14 Q And you didn't even try to  
15 quantify the difference in operating costs for  
16 Harrisburg, did you?

17 A Opportunity costs, I think you  
18 mean. You just said operating costs.

19 Q I meant to say opportunity costs.

20 A I just want to make sure we're on  
21 the same page.

22 Q Yes.

1           A       I did not undertake that because  
2   again it's -- there's -- I could not develop  
3   a reliable way to do that analysis.

4           Q       Let me re-ask the question a  
5   little bit differently. You didn't even try  
6   to quantify the difference in opportunity  
7   costs in Harrisburg DMA, correct?

8           A       It's something I thought about  
9   doing. I just couldn't figure out a way to  
10   try to do it. So the answer is -- I mean the  
11   answer is I thought about doing it. I tried  
12   to develop a methodology to do it, but it's  
13   not something I was able to undertake.

14          Q       And you didn't try to do that in  
15   Roanoke-Lynchburg, did you?

16          A       Same answer for Roanoke and Tri-  
17   Cities.

18          Q       And you didn't try to do that  
19   anywhere across MASN's footprint, correct?

20          A       Precisely, because it's an  
21   analysis that I didn't think I could reliable  
22   do and present.

1           Q       Well, isn't it true, you didn't  
2 even ask anyone at Comcast what the costs  
3 would be to add MASN in any of these markets?

4           A       That's a separate question now.

5           Q       Yes. It is a separate question.

6           A       And the answer is I was aware of  
7 issues of capacity, constraints, etcetera, but  
8 it's not a quantitative analysis that I  
9 undertook or asked them to help me undertake.

10          Q       So is it true that you didn't even  
11 ask Comcast what is the opportunity costs to  
12 these markets, didn't even ask that question?

13          A       Well, generally, I asked that in  
14 the course of interviews with them, of course.  
15 But quantitatively, I could not, I was not  
16 able to do it in part because I couldn't do  
17 the other side of the coin is what the answer  
18 for DIRECTV and EchoStar.

19          Q       Mr. Orszag, do you remember me  
20 asking you the following question and you  
21 giving the following answer in your  
22 deposition?



1                   "Question: Who in Comcast has  
2   told you any one of those or any combination  
3   of those is the opportunity cost of carrying  
4   MASN in Harrisburg?

5                   Answer: I think I was presenting  
6   this as a theoretical matter.

7                   Question: No one told you that?

8                   Answer: I think I said quite  
9   clearly, I think previously, it's not an  
10  analysis I conducted.

11                  Question: Is the answer the same  
12  with respect to the Tri-Cities region?

13                  Answer: Yes, it is.

14                  Question: Is your answer the same  
15  with respect to the Roanoke/Lynchburg market?

16                  Answer: Yes, it is."

17           A       And I think we also had a previous  
18  discussion --

19           Q       There's a question on the table,  
20  Mr. Orszag. Do you recall being asked those  
21  questions and giving those answers?

22           A       Yes, I do.

1           Q       Thank you. Now the testimony you  
2       were giving here today about the opportunity  
3       cost structure and why the satellite guys  
4       aren't the right comparator for Comcast.  
5       That's different from your NFL testimony,  
6       isn't it?

7           A       No, it's not at all.

8           Q       Okay. Well, DIRECTV had a deal  
9       with the NFL network called Sunday Ticket,  
10      right?

11          A       Yes. It's an exclusive deal.

12          Q       And you said you couldn't look at  
13      the DIRECTV arrangement as a comparable for  
14      what Comcast was doing, correct?

15          A       Right.

16          Q       And you said it was because  
17      DIRECTV had a cozy relationship with the NFL  
18      because of its Sunday Ticket, correct?

19          A       I don't know if I used the word  
20      cozy. It doesn't sound like a word I would  
21      have used, but they had a relationship that I  
22      was unable to disentangle.

1           Q       You never mentioned opportunity  
2 cost being the reason why you ignored DIRECTV  
3 in the NFL case, did you?

4           A       Because they're completely  
5 separate issues.

6           Q       So you never did that, right? You  
7 never studied the opportunity costs for the  
8 satellite guys in the NFL case, it's different  
9 than Comcast, did you say that?

10          A       At some place in my written  
11 testimony, if I recall, I did mention the  
12 issues of opportunity costs in the capacity  
13 constraints of cable companies being different  
14 than the capacity constraints of cable  
15 companies and I remember quite clearly sitting  
16 in this chair talking about the difference in  
17 technologies and the role that plays in those  
18 decisions.

19          Q       Sir, I asked you a different  
20 question.

21          A       Well, the technology differences  
22 drive the --

1           Q       Let me try to get the question  
2 out. Because I understand why you want to  
3 give these speeches, but I'm just trying to  
4 get clear questions, okay? Fair?

5           A       Okay.

6           Q       Did you ever offer an opinion that  
7 you should disregard DIRECTV in the NFL case  
8 because the opportunity costs are different  
9 for the satellite guys than they were for  
10 Comcast?

11          A       No, I put the DIRECTV and EchoStar  
12 in a very similar context that I'm putting  
13 them here in the NFL case.

14          Q       I'm sure I worded this question  
15 poorly, so let me try again.

16                   In the NFL case, when you  
17 testified exactly where you're sitting today  
18 in front of Your Honor, did you offer any  
19 opinion that you should ignore the satellite  
20 guys, because their opportunity costs are  
21 different than Comcast's?

22          A       I never said you should ignore

1     them in that case.

2           Q       Isn't it true Mr. Orszag, that the  
3     opportunity costs are not different?

4           A       Absolutely not.

5           Q       You don't even know what the  
6     capacity is for the Comcast systems in  
7     dispute, do you?

8           A       I've seen data with regard to the  
9     capacity of the systems in dispute attached to  
10    Mr. Wyche's expert report.

11          Q       And that was recently, correct?

12          A       That was actually, well, it  
13    depends on what you define by recently, but it  
14    was prior to my expert report, if I recall,  
15    but I may be off on the timing.

16          Q       That was not a basis of your  
17    opinion in the expert report, was it?

18          A       I did not cite that in my expert  
19    report, that is correct. I did not rely upon  
20    it in my expert report.

21          Q       Because you didn't know what it  
22    was at the time I deposed you, did you?

1           A       I did know -- I think we talked  
2 about the fact that Mr. Wyche had that as the  
3 data attached to one of his reports and we  
4 talked about that in my deposition.

5           Q       Do you recall being asked the  
6 following question and giving the following  
7 answer?

8                   "Question: Do you know what  
9 Comcast's analog channel capacity is in the  
10 Harrisburg DMA?

11                   Answer: Sitting here today, I do  
12 not know the answer to that."

13           A       Those are entirely consistent. I  
14 know as we're sitting here today, I don't know  
15 what it is either, whether it's 750, 550, what  
16 the precise number is.

17           Q       And that was not relevant in the  
18 analysis that you conducted, true?

19           A       It was relevant as a qualitative  
20 matter. I could not undertake the  
21 quantitative analysis that I wanted to  
22 undertake with regard to opportunity costs.

1           Q       In fact, you listed all the  
2 documents that you relied upon in forming your  
3 expert opinion, correct?

4           A       That I relied upon, not  
5 considered.

6           Q       Correct, you relied upon?

7           A       Yes.

8           Q       And you did not list any documents  
9 reflecting what the capacities would be for  
10 the systems at issue, true?

11          A       That is true.

12                 JUDGE SIPPEL: So then capacity  
13 was not relied upon?

14                 THE WITNESS: No, I considered it  
15 because I couldn't do the more complete  
16 analysis that I wanted to in terms of  
17 analyzing going to the next level of capacity  
18 and translating that into opportunity costs  
19 which is really the economic analysis that one  
20 would want to undertake. So I couldn't take  
21 it the next level and because I couldn't take  
22 it to the next level, I didn't rely upon that

1 document.

2 JUDGE SIPPEL: Is that only on a  
3 document by document basis or is that in terms  
4 of your overall analysis?

5 THE WITNESS: On a document by  
6 document basis. I qualitatively reflect it,  
7 but not specifically to a document.

8 BY MR. KIM:

9 Q Mr. Orszag, I'd like to direct you  
10 to paragraph 21 of your testimony, your  
11 written testimony?

12 A Sure.

13 JUDGE SIPPEL: What was that  
14 again?

15 MR. KIM: You know what, I think I  
16 put paragraph, but it's actually the page.

17 THE WITNESS: I was going to say  
18 paragraph 21 is a short one.

19 MR. KIM: We can get through that  
20 pretty quickly.

21 JUDGE SIPPEL: I'm good at those.

22 MR. KIM: Your Honor, it's page



1 21, paragraph 38.

2 JUDGE SIPPEL: Got you.

3 Paragraph, page 21. Oops.

4 BY MR. KIM:

5 Q If I read the first line  
6 correctly, sir, when I read, "As noted above,  
7 the foregoing tables and analysis address only  
8 terrestrial MVPDs serving the contested areas.  
9 Comcast carriage of MASN is also consistent  
10 with carriage of MASN by Dish Network, in  
11 parens, EchoStar." Did I read that correctly?

12 A Yes, you did.

13 Q So you have no objection with the  
14 ALJ ordering Comcast to carry MASN on the same  
15 terms as Dish carries MASN?

16 A No, that's not what I'm saying  
17 here.

18 Q Your testimony is Comcast carriage  
19 of MASN is also consistent with the carriage  
20 of MASN by Dish Network, true?

21 A Yes, but I'm looking at different  
22 metric here.